DRN-4362473

The complaint

Mr B complains about the advice given by TenetConnect Limited ('Tenet') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He thinks the advice may have been unsuitable for him and has caused a financial loss.

What happened

In March 2016, Mr B's employer announced that it would be examining options to restructure its business, including decoupling the employer's DB scheme (the 'BSPS') from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund (PPF), or a new defined benefit scheme (BSPS2). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them three options; to either stay in BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017).

Mr B wasn't sure what to do about his pension so he got in touch with a representative of Tenet. Mr B met with Tenet in December 2017 and it gathered information about his circumstances and objectives. It noted Mr B was 27, that he had a partner but wasn't married and had no dependents. It was recorded that Mr B earned around £40,000 per year and had significant disposable income which he was saving towards a house deposit. Tenet noted Mr B had £43,000 saved and hoped to be able to purchase a home in 2018.

Tenet noted Mr B had a 'high' attitude to risk (8/10); that he wanted to retire early, ideally by age 60 and have an income of around £24,000 per year. It was further noted Mr B and his employer were contributing 16% of his salary per month to his employer's new defined-contribution ('DC') pension scheme, equivalent to around £6,000 per year.

In January 2018 Tenet advised Mr B to transfer his BSPS benefits to a SIPP. It said this would give Mr B the option to retire at 60 and adjust his income as per his needs. Tenet said that Mr B could expect high levels of growth based on his attitude to risk and willingness to take risk. It said this provided significantly more advantageous death benefits for his future wife and children. And overall it said the transfer significantly outweighed the loss of guarantees through the BSPS. Mr B accepted this advice and £90,881.97 was transferred from the BSPS to his new SIPP.

In 2022 Mr B complained to our Service about the advice he received, believing it may have been unsuitable for him and had caused him a loss. Mr B said that Tenet told him he could accrue a higher pension than the BSPS2 if he invested in a high-risk portfolio.

The complaint was passed to Tenet but it didn't uphold it. Tenet said the advice was suitable as Mr B had a high attitude to risk so it thought he was likely to be able to achieve the growth required to improve on his BSPS benefits. It also said Mr B had the capacity to take this risk because he would be building up further pension benefits over the next 30 years. Tenet added that transferring his benefits gave Mr B flexibility to retire early without penalty and to reduce his income once his state pension became payable. It also provided Mr B's estate with better death benefits. Tenet said that Mr B had been thinking about transferring out of the BSPS for several months, having engaged with another adviser previously.

Unhappy with Tenet's response, Mr B asked our Service to investigate. He still felt he'd been introduced to unnecessary risk by transferring and had lost valuable guarantees. One of our Investigators looked into the complaint and said it should be upheld. He thought the advice was unsuitable as Mr B wasn't likely to be able to exceed the benefits available to him under the BSPS2 and he didn't think there were any other reasons for Mr B to transfer out of the BSPS given Mr B had at least 30 years before he could think about retiring. The Investigator recommended Mr B should be compensated based on him having opted to join the BSPS2.

Tenet didn't agree – it maintained the advice was suitable as the transfer met all of Mr B's objectives. It said Mr B was well versed in investment matters and he could afford to take the risk with his pension. It also maintained the growth required to match his DB scheme benefits was achievable based on his high attitude to risk.

The complaint was subsequently referred for a final decision.

In August 2022 the regulator, the Financial Conduct Authority ('FCA'), launched a consultation on changes to its DB transfer redress guidance. So, the Investigator wrote to Mr B to advise him of the FCA's proposed changes which were due to come into effect in April 2023 and to give him the option to have any redress due to him calculated under the then current guidance or to wait for the new rules to come into effect. Mr B chose to have his compensation calculated under the new rules and guidance.

The Investigator subsequently informed both Mr B and Tenet that if the Ombudsman considering the case decided to uphold it, they may require Tenet to calculate any redress owed to Mr B using the FCA's BSPS-specific redress calculator. Although the calculator has been developed specifically for the BSPS consumer redress scheme, the Investigator explained that the FCA encouraged firms to use the calculator for non-scheme cases, such as Mr B's complaint with our Service.

The case was passed to me to make a final decision on the matter. I issued a provisional decision upholding the complaint on 18 August 2023.

Tenet accepted my provisional decision and said it was willing to carry out a loss assessment using the FCA's calculator. Mr B made the following comments:

- He is extremely disappointed that it was possible to receive such bad advice and feels the adviser did so for personal gain.
- His anxiety levels have increased whilst waiting for an Ombudsman's decision and having found out that compensation levels have decreased as a result of current market conditions.
- He doesn't think it is fair that the redress calculator takes into account the current annuity market as the price of purchasing an annuity is likely to change significantly between now and his retirement.
- He is ultimately concerned that he will not be fairly compensated for the unsuitable advice.
- It is unfair that someone in identical circumstances to him should receive more compensation simply because they complained earlier than him when the market conditions were very different.

As both parties have responded to my provisional decision, I'm now providing my final decision on the matter.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Neither Mr B nor Tenet have disputed the findings I made in my provisional decision about the suitability of the advice Mr B received. So, I will simply set out my findings again beneath.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Tenet's actions here.

PRIN 6 : *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint.

The FCA states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable and that a transfer should only consider the transfer to be suitable if it can clearly demonstrate it is in the consumer's best interests. I'm also mindful that under COBS 9.2.1R Tenet needed to take reasonable steps to ensure that its recommendation to Mr B was suitable for him. And having looked at all the evidence available, I'm not satisfied Tenet took reasonable steps to ensure the advice to transfer was suitable for Mr B or that it was in his best interests.

Financial viability

It seems to me that Tenet's main reason for recommending that Mr B transfer out of the BSPS was because he had the capacity to take a high risk with his pension, such that he was likely to be able to improve on his DB scheme benefits. I've considered this carefully.

Tenet carried out a transfer value analysis report ('TVAS'), as required by the regulator, showing how much Mr B's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). The TVAS used the benefits available to Mr B through the BSPS2 for comparison purposes.

According to the information gathered by Tenet, Mr B said he wanted to retire early, around age 60. So, the TVAS dated 26 January 2018 set out the relevant critical yields; at age 65 it was 5.83% if Mr B took a full pension. And at age 60 it was 6.15% if he took a full pension. Tenet didn't produce critical yield rates based on Mr B taking tax-free cash ('TFC') and a reduced pension.

The critical yield required to match the benefits provided through the PPF at age 65 was 5.53% if Mr B took a full pension and 5.34% if he took TFC and a reduced pension. At age 60, it was 5.96% if he took a full pension and 5.79% if he took a reduced pension and TFC.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given.

The relevant discount rate at the time the advice was given was 4.7% a year for 37 years to retirement and also 4.7% a year for 32 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% a year.

Tenet assessed Mr B's attitude to risk as 8/10 or 'high'. And it recommended an investment strategy in line with this which involved Mr B investing 85% of the funds in equities and 15% in property. However, I don't think that was a fair assessment of his overall risk profile, which should've also included proper consideration of his capacity for loss.

It appears that Tenet based its assessment of Mr B's attitude to risk on a questionnaire, which was completed on 22 December 2017. Mr B's answers actually placed him in the highest risk category, or 10/10. However, Tenet reduced this to 8/10. But assessing a customer's risk profile is not simply a tick-box exercise or one that should rely solely on the customer's thoughts about their attitude to risk. Tenet's assessment should've taken account of Mr B's whole circumstances. And the answers Mr B gave in the questionnaire shouldn't have been taken wholly on face value, particularly when they conflicted with things Tenet already knew about Mr B.

For example, Mr B said that he *"strongly agreed"* with the following two statements:

2) "I feel comfortable about investing in the stockmarket."
9) "I have little experience of investing in stocks and shares."

To my mind, those two statements are not particularly compatible. It is unclear how someone can feel comfortable investing in the stockmarket when they have no experience of doing so. Furthermore, Tenet noted in the fact-find that although Mr B did not believe a short term loss of capital would have a material effect on his standard of living in retirement, he said that he would start to feel uncomfortable if the value of his investments dropped significantly. So, I think this demonstrates that while Mr B was open to taking risk to achieve higher returns, he still wasn't prepared to take such a risk that he could experience significant losses. And to my mind, an 8/10 risk strategy would expose him to such a risk.

Mr B also said that he *"agreed"* he'd rather take his chances with higher risk investments than increase the amount he's saving. And he *"strongly disagreed"* that he generally looks for safer investments, even if that means lower returns. But according to the fact-find completed on 18 December 2017, Mr B had a significant sum in savings held on deposit. Mr B had not invested or taken any amount of risk with those savings. While I appreciate he was saving for a house deposit, if Mr B genuinely had a high appetite for risk and felt comfortable taking such risk, I'd have expected him to have invested at least some of his savings in order to boost his returns. So, I think Tenet ought to have known that Mr B had no experience of high-risk investments.

I also think that it was apparent that Mr B did not fit Tenet's own description of an investor with an 8/10 risk level:

"Investors in risk levels 7 and 8 do not typically regard themselves as cautious people and are inclined to view risk as a source of opportunity rather than as a threat. They generally have significant experience of investment and find investment matters fairly easy to understand. They tend to make investment decisions relatively quickly and are not usually particularly anxious about the investment decisions they have made. They typically look for higher returns rather than safer investments. They are reasonably comfortable about investing in the stock market and typically prefer riskier, but higher returning, investments to keeping money in bank deposits."

Like the description above, I think a customer with a genuinely high attitude to risk would be experienced in investment matters, as I think they would need such experience and knowledge in order to understand the risks such an investment strategy would pose. But Mr B had almost no investment experience. According to the fact-find, Tenet noted Mr B's only experience was choosing his investment options for his new DC pension. But this pension had been open for less than a year at that point. And according to the suitability report, the pension was 100% invested in the Diversified Assets fund, which comprised 65% in global equites and 35% fixed interest. So, Mr B had opted to invest in a regular managed fund, rather him having built the portfolio himself. So, I don't think this demonstrates any real expertise in investment matters.

Tenet also had to consider Mr B's capacity for loss. In the fact-find, Tenet noted that the BSPS benefits were not core to meeting Mr B's needs because he had potentially another 33 years to retirement and any loss of capital or value in the transferred benefits would not have any effect on his standard of living now or in the future. But I don't see how Tenet could reasonably reach that conclusion when Mr B's retirement was so far ahead in the future. Tenet estimated that Mr B would need around £24,000 net per year in retirement in today's terms – although this was no more than a 'best guess', it isn't a particularly high sum so I'm prepared to accept that as a reasonable estimate. Tenet has provided a calculation showing that with inflation at only 2%, that would equate to over £45,000 net when Mr B reached age 60. Even if taking into account Mr B's capacity to build further pension funds, I find it hard to believe that Mr B's guaranteed, escalating DB pension income would not be considered an important part of helping him meet his target income at retirement.

In terms of Mr B's other assets, he had savings, but these were earmarked for a property purchase. And Mr B expected that the £1,000 per month he was saving towards the deposit would instead be required for costs associated with his mortgage and other living expenses. So, once he became a homeowner, I don't think Mr B had much capacity to save thereafter.

Tenet also noted that Mr B was expecting an 'inheritance' from his parents in the future. But without further details about what this would entail, and when Mr B might reasonably expect it, I don't think it was reasonable for Tenet to consider this as part of Mr B's assets that gave him a higher capacity for loss.

So it seems to me that Mr B's capacity for loss assessment was based solely on the potential future pension funds he would accrue. I accept Mr B would go on to build new pension funds, which would ultimately go on to represent a large part of his retirement provision. But I don't think having the capability of building up further pension funds meant he could afford, or had the need, to give up his guaranteed pension.

Overall, I appreciate that Mr B was expected to work for at least another 30 years or so, and as such would be expecting to build significant further pension funds. But I still don't think he could afford to take a high level of risk with these pension funds just because he had the capacity to build more in future. This represented Mr B's only guaranteed pension at the time of the advice, so I don't think he should've been advised to subject them to high investment risk, particularly as he already had a DC scheme where he could take a higher-risk approach with some or all of those funds if he wanted to. However, given the time to retirement and his capacity to build further pension funds, I accept Mr B was open to taking more than a 'medium' risk with these pension funds. So, I overall, I think a fair assessment of his attitude to risk was most likely 'high-medium' or around 6/10 on Tenet's scale.

I've taken the discount rate into account, along with Mr B's 'high-medium' attitude to risk and also the term to retirement. With a 'high-medium' attitude to risk, I think there was a reasonable chance Mr B could've matched the benefits available to him under the BSPS2 and the PPF, although this was more likely if he retired at age 65 given the higher critical yields at age 60. However, in Tenet's suitability report, it recognised that there was still a reasonable chance the critical yields would not be achieved. And I think there would be little point in Mr B giving up the guarantees available to him through his DB scheme only to achieve the same level of benefits outside the scheme. I'm also mindful that simply just to be able to match the scheme benefits, that required a consistent average investment return of between 5.5% and 6% over 30 years, which was above the discount rate and was by no means guaranteed.

So, overall, I don't think Mr B was likely to be able to improve on his DB scheme benefits at retirement if he transferred out of the BSPS. And even just to match them he would have to rely on consistent returns in excess of the regulator's middle growth rate. I don't think Mr B needed to risk his guaranteed pension in this way, given his capacity for loss and the fact the pension benefits he would accrue in future would all be subject to investment risk. So for this reason alone, I don't think Tenet has shown that it was clearly in Mr B's best interests to transfer out of the BSPS.

However, financial viability isn't the only consideration when giving transfer advice. Other objectives might mean a transfer is suitable overall. Although I think Tenet's primary reason for recommending that Mr B transfer out of the BSPS was because it thought he had the opportunity to improve on his pension benefits, I note that it said in the suitability report that being able to exceed the critical yields would not be a reason for recommending a transfer in isolation. But Tenet said Mr B had a number of other objectives it thought would be better served outside of the DB scheme, which supported its recommendation. So, I've thought about whether Mr B's other objectives meant a transfer was still suitable for him overall.

Flexibility and income needs

In the suitability report, Tenet said that Mr B was attracted by the potential of taking a flexible tax efficient income to suit his circumstances and the potential for a higher TFC entitlement. It also said he was interested in taking benefits from the earliest retirement age without penalty, and was aware of the 'early retirement penalties' in the BSPS. It noted Mr B wanted to retire early, around age 60, but he might consider working past age 60 if necessary to subsidise any income shortfalls at or near retirement.

I have taken this into account but I'm also mindful that Mr B was at least 30 years away from retiring. So, although he thought he'd like to retire early – as most people do – whether that was realistically achievable for him wasn't something he or Tenet could say with any certainty. I also think it's worth noting here that Tenet's suitability report presented early retirement from the DB scheme as being something to be avoided because of the 'penalty' that applied when doing so. Whereas it said if Mr B transferred his pension he could retire early without 'penalty'. But the 'penalty' that Tenet referred to was in fact actuarial adjustments. Those adjustments reflect that, by taking a pension earlier, it's likely that the pot to pay for that pension will have to last longer. As such the scheme's actuaries calculate a reduction in the yearly pension to allow for the fact that the pensioner will claim the pension – most likely – for a longer period. That is not a 'penalty' for taking the pension early, it's simply a compromise for having the benefits of that pension paid over a longer period. And I think describing early retirement factors as a 'penalty' wasn't providing Mr B with information that was clear, fair and not misleading.

I also think that most people, when asked, would say they require flexibility. And as I've said above, I think it was too soon for Mr B to say what his actual retirement needs were. But even if I accept that this was a genuine objective for Mr B, it's evident that he would likely have a significant degree of flexibility at retirement even if he remained in the DB scheme. That's because Mr B would be building up further pension funds over the next 30 years and these were held in a DC scheme. This type of pension allowed Mr B to take a flexible income, as well as TFC, so he would already likely have the ability to increase or decrease his income in retirement as he saw fit. And I don't think he would've needed extra flexibility of income beyond this because the income he could take from the BSPS2 at age 60, together with his state pension entitlement, was well below Mr B's minimum income requirements in retirement. So, Mr B wouldn't likely need to take less income from the DB scheme as he could simply decrease the income he took from the DC scheme if he needed to.

Tenet has also said that a benefit of transferring was the potential for Mr B to take a higher level of TFC than he could get from the BSPS2 at age 60. But I haven't seen any evidence to persuade me that Mr B needed access to a higher amount of TFC than the scheme provided, particularly as he could also take 25% of his DC pension fund as TFC. So, I don't think that was a genuine objective for Mr B, it was simply a consequence of transferring out of the scheme. I'm also mindful that if Mr B remained in the BSPS2 he would've retained the ability to transfer out of that scheme closer to his retirement, if that was something he genuinely needed to do.

Tenet may say that the transfer value offered to Mr B at the time was enhanced and that any amount offered to transfer out of the BSPS2 in the future would likely be at a reduced rate. However, I don't think that was a good enough reason to transfer out of the scheme, when Mr B had no real need to do so.

Tenet may argue that transferring out of the BSPS was the only way for Mr B to achieve his target income of £24,000 per year – equivalent to over £45,000 at Mr B's age 60.

The suitability report seems to suggest this wouldn't have been possible if he joined the BSPS2 as it would've required an average return of 9.21%, which wasn't achievable. However, while the suitability report made mention of the state pension Mr B would be entitled to at age 68, it doesn't appear that it factored in the impact of this entitlement on his overall income need when working out the growth rate required to provide his target income at age 60. Furthermore, the modelling used to estimate the value of Mr B's DC scheme was based on him only increasing his pension contributions each year in line with inflation, whereas it is generally the case that consumers increase their contributions as they get older and depending on how much they can afford to contribute. So, I think that a model reflecting these facts would likely demonstrate that Mr B could've met his income needs by remaining in the BSPS2.

I have also seen that in order for Mr B to meet his income needs by transferring out of the DB scheme, Tenet said his full pension provisions (including his DC scheme funds) would have to grow at 6.76% gross before on-going charges. It said a growth rate of 6.76% was achievable for a client willing to take risk over a long period of time with a 75% to 85% equity asset allocation. But as I've said above, I don't think that this was fair reflection of Mr B's attitude to risk when taking account of his capacity for loss, so I don't think that level of return was consistently achievable for Mr B. And as such, I think it was misleading for Tenet to suggest Mr B could meet his income need by following this strategy.

Overall, I think that Mr B had more chance of meeting his income needs in retirement through a combination of taking his benefits under the BSPS2 and taking flexible drawdown from his DC scheme. And this provided him with a higher amount of guaranteed income, thereby decreasing his overall risk in retirement. So, I don't think it was suitable or in Mr B's best interests to advise him to transfer his DB pension, exposing him to the risks of the financial markets, just to have extra flexibility that he didn't need. That's particularly the case given Mr B's DC scheme already provided him with a degree of flexibility and would already be exposed to investment risk.

Death benefits

Tenet said that Mr B would benefit from significantly more advantageous death benefits to leave to his future wife and children, and that Mr B was attracted by this.

Death benefits are an emotive subject and of course most people would like their loved ones to be taken care of when they die. And I'm sure that the idea of leaving a large sum to his future family in the event of his death sounded attractive to Mr B, as it would to most people. But whilst I appreciate death benefits are important to consumers, I don't think it was actually a priority for Mr B. This is also reflected in the suitability report, where Tenet noted that lump sum death benefits were his lowest ranked priority because he did not yet have a spouse or dependents.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr B was not married but he had a partner – given that Tenet referred to Mr B's future wife, it seems that he envisaged being married in the future, as well as having children. So, I think the spouse's pension provided by the BSPS2 would've been useful to his future spouse if Mr B predeceased her. The spouse's pension was guaranteed and it escalated – and under the BSPS2 the spouse's pension would be calculated as if no TFC had been taken. Furthermore, this benefit was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And if investment returns were poor, there may not have been a large sum to pass on in any event, particularly if Mr B took more out of the fund than he anticipated in the early years of his retirement.

I'm also mindful that Mr B expected his DC pension to form his main retirement provision, given he expected to make further contributions to it throughout his working life. And Mr B could've nominated any beneficiaries of his choosing to receive the remaining funds in this pension. Any additional pension income above that which was needed could've also been saved in a tax-efficient way for the benefit of his family, for example, through a trust. Also, if Mr B had genuinely wanted to leave a legacy for his future family, which didn't depend on investment returns or how much of his pension fund remained on his death, then I think Tenet should have instead explored life insurance. Mr B was young and in excellent health, so life insurance was likely to be cheap and would have enabled him to leave a legacy without risking his retirement income.

So, I think Mr B already had valuable death benefits through the DB scheme and he could've made other arrangements (in the ways I've set out above) to ensure that his family were provided for on his death if he was genuinely concerned about this. But as I've said above, I don't think this was really a genuine objective for him at the time of the advice. Overall, I don't think it was suitable advice for Mr B to transfer his pension to obtain extra death benefits that he didn't really need.

Control and concerns over the financial stability of the DB scheme

It's clear that Mr B, like many employees of his company, was concerned about his pension. And moving to the PPF was widely perceived to be a poor outcome for members. Mr B says he was aware that some of his colleagues had transferred out, so it's quite possible that he was already leaning towards the decision to transfer out because of this.

It's well documented that this was a period of uncertainty for people like Mr B. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice. So it was Tenet's obligation to give Mr B an objective picture and recommend what was in his best interests.

Mr B had already chosen to join the BSPS2 and at the time the advice was given, all signs pointed to the scheme going ahead. But even if there was a chance the BSPS2 wouldn't go ahead, I think that Tenet should've reassured Mr B that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr B through the PPF at age 60 wasn't substantially lower than the benefits he could obtain from the BSPS2, and as I've set out above, he was unlikely to be able to improve on this by transferring out – the critical yields relevant to the PPF at age 60 were around 6%. Although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should've led to Tenet recommending Mr B transfer out of the DB scheme altogether.

I also think Mr B's desire for control over his pension benefits was overstated. Tenet said that Mr B had, *"looked at shares and investments"* and was, *"well prepared"* for the meeting with the adviser. But I still don't think Mr B was an experienced investor and I cannot see that he had the knowledge to be able to manage his pension funds on their own. Indeed, the recommendation letter suggested he would remain reliant on professional advisers as he had agreed to pay for ongoing advice. So, I don't think that having control was a genuine objective for Mr B – it was simply another consequence of transferring away from his DB scheme.

Summary

I accept that Mr B may have been motivated to transfer out of the BSPS when he met with Tenet. And I appreciate that being told he could have flexibility in the way he took his benefits and that he could achieve a higher pension if he transferred out to a SIPP would have sounded attractive to Mr B. But Tenet wasn't there simply to just arrange what Mr B might have thought he wanted. It was obliged to really understand what Mr B needed, to give him an objective picture and to recommend what was in his best interests.

And ultimately, I don't think the advice Tenet gave to Mr B was suitable. He was giving up a guaranteed, risk-free and increasing income under the BSPS2. And if Tenet had followed a robust process in assessing Mr B's attitude to risk, and properly considered his capacity for loss, I think it ought to have been clear that Mr B was unlikely to be able to improve on his

BSPS2 benefits by transferring out. And in my view, Mr B should not have been encouraged to take that risk, particularly as there were no other compelling reasons which would justify a transfer and outweigh it. So, I don't think it was in Mr B's best interests for Tenet to advise him to transfer his DB scheme benefits to a SIPP.

By the time the advice was given Mr B had already opted to join the BSPS2. While Mr B indicated he wanted to retire early, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by maintaining his choice to join the BSPS2, Mr B would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2 compared with the PPF. So, I think Tenet should've advised Mr B to maintain his choice to join the BSPS2.

Tenet may argue Mr B would have transferred out even if it had advised against it, either by insisting with Tenet or by using another independent financial adviser. It says that Mr B had already met with an adviser who had indicated that he should not transfer out of the BSPS, but Mr B still sought further advice from Tenet. Tenet says it also provided Mr B with extensive information about the risks of transferring and what he'd be giving up if he proceeded with the transfer. So, ultimately it believes Mr B made an informed choice to proceed with the transfer and he would've transferred in any event.

I accept that Tenet disclosed the risks of transferring to Mr B, and provided him with a significant amount of information in the suitability report. But I think it misled him about the chance of him being able to improve on his DB scheme benefits. And ultimately it advised Mr B to transfer out of the scheme, and I think Mr B relied on that advice. While Mr B had met with an adviser before meeting with Tenet, he says he wasn't provided with any formal advice. And he's explained that he didn't feel the adviser was very professional, so he wanted a second opinion. Given the significance of the choice Mr B was facing, I don't think that was unreasonable or that it means Mr B would have transferred in any event.

Mr B had already chosen to join the BSPS2, so had already shown a willingness to stay in the DB scheme. And if Tenet had provided Mr B with clear advice against transferring, explaining that he was unlikely to be able to exceed the benefits available to him through the BSPS2 if he transferred out, I think that would've carried significant weight. Overall, I've seen nothing to persuade me that Mr B would not have accepted that advice.

In summary, I think Mr B would've maintained his decision to join the BSPS2 if he'd been advised to do so. And so Tenet should compensate Mr B for the unsuitable advice, in line with the regulator's rules for calculating redress for non-compliant pension transfer advice. And it is the benefits available to him through the BSPS2 at age 65 that should be used for comparison purposes, as I don't think there is sufficient evidence to persuade me that Mr B would've gone on to take his DB scheme benefits any earlier than age 65 had he been advised to remain in it. I think it is too early to say whether Mr B will actually be able to, or be inclined to, retire at age 60.

I appreciate Mr B's concern that market conditions could become less favourable in the future, and that when he comes to retire he may not have enough in his pension fund to replace his benefits because of changes in annuity rates. But the regulator has set out what it considers the appropriate method of compensation to be in instances of unsuitable pension transfer advice. And that requires Tenet to calculate how much Mr B would need in his pension pot today in order to be able to replace his BSPS2 benefits at retirement.
I appreciate that this calculation can't take into account unforeseen events that could change economic factors or financial assumptions in the future, but this method of redress is also based on the approach a court would take in similar cases. So, ultimately I'm satisfied the

regulator's redress method puts Mr B back, as far as possible, into the position he would have been in had he not transferred his BSPS benefits.

Mr B has also said that he has suffered a great deal of anxiety in bringing the complaint. But I can only award compensation for the impact of the unsuitable advice here. And I'm mindful that the redress calculation Tenet will be undertaking will, as far as possible, ensure that Mr B is not financially disadvantaged by it. Mr B is also a long time away from his eventual retirement, so I don't think that having to bring the complaint has had much of an impact on his retirement planning. So, I'm not making any other award here other than requiring Tenet to carry out a loss assessment as below.

Putting things right

A fair and reasonable outcome would be for the business to put Mr B**,** as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr B would most likely have joined the BSPS2 if suitable advice had been given.

Tenet must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

Tenet should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr B and our Service upon completion of the calculation.

Mr B has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Tenet should:

- calculate and offer Mr B redress as a cash lump sum payment,
- explain to Mr B before starting the redress calculation that:
    - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr B receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr B accepts Tenet's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr B for the calculation, even if he ultimately decides not to have any of their redress augmented,

and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr B's end of year tax position.

Redress paid to Mr B as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Tenet may make a notional deduction to cash lump sum payments to take account of tax that Mr B would otherwise pay on income from his pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr B's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require TenetConnect Limited to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that TenetConnect Limited pays Mr B the balance.

If Mr B accepts my final decision, the money award becomes binding on TenetConnect Limited.

My recommendation would not be binding. Further, it's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B may want to consider getting independent legal advice before deciding whether to accept my final decision.

TenetConnect Limited should provide details of its calculations to Mr B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 October 2023.

Hannah Wise
Ombudsman